IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

OP.No. 14529 of 2000 D

PETITIONERS:
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1. PHILIP PANDICHERIL, S/O. P.V. MATHEW,
   PANDICHERIL HOUSE, KUTTOOR P.O.,
   THIRUVALLA.

2. VINCENT MATHEW, S/O. P.V. MATHEW,
   PANDICHERIL HOUSE, KUTTOOR P.O.,
   THIRUVALLA.

BY ADV. SRI.K.J.JOSEMON

RESPONDENTS:
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1. THE DEPUTY TAHSILDAR, REVENUE RECOVERY,
   KERALA FINANCIAL CORPORATION, ALLEPPEY.

2. THE KERALA FINANCIAL CORPORATION,
   REPRESENTED BY ITS MANAGING DIRECTOR,
   VELLAYAMBALAM, TRIVANDRUM - 33.

GOVERNMENT PLEADER SHRI BENJAMIN PAUL.
SRI.V.B.UNNIRAJ,SC KFC
SRI.M.M.SAYED MUHAMMED, SC, KFC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.23489/00 IN OP NO.14529/00

DISMISSED

14.12.2007 SD// K. M. JOSEPH, JUDGE

APPENDIX IN OP NO.14529 OF 2000 D

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF RESIGNATION LETTER DATED 10.6.97 OF THE 1ST PETITIONER.

EXT.P2 TRUE COPY OF RESOLUTION DATED 3.9.97 OF THE DIRECTOR BOARD OF MS/ INDIA CASSETS PVT. LTD.

EXT.P3 TRUE COPY OF FORM 32 DATED 25.9.97 SUBMITTED SUBMITTED BEFORE THE REGISTRAR OF COMPANIES, ERNAKULAM.

EXT.P4 TRUE COPY OF BALANCE SHEET OF M/S. INDIA CASSETS PVT. LTD. AS ON 31.3.98.

EXT.P5 TRUE COPY OF NOTICE NO.KFC/4/2000 DATED 13.4.2000 (FORM NO.10) ISSUED UNDER SEC. 34 OF THE REVENUE RECOVERY ACT TO THE 1ST PETITIONER.

EXT.P5(A) TRUE COPY OF NOTICE NO.KFC/4/2000 DATED 13.4.2000 (FORM NO.1) ISSUED UNDER SECTION 7 OF THE R.R. ACT TO THE 1ST PETITIONER.

EXT.P6 TRUE COPY OF NOTICE NO.KFC/4/2000 DATED 13.4.2000 (FORM NO.10) ISSUED UNDER SEC. 34 OF THE R.R. ACT TO THE 2ND PETITIONER.

EXT.P6(A) TRUE COPY OF NOTICE NO.KFC/4/2000 DATED 13.4.2000 (FORM NO.1) ISSUED UNDER SEC. 34 OF R.R. ACT TO THE 2ND PETITIONER.

RESPONDENTS' EXHIBITS: NIL.

// TRUE COPY //

PS TO JUDGE

K. M. JOSEPH, J.

O.P NO. 14529 OF 2000 D

Dated this the 14th December, 2007

JUDGMENT

Petitioners have approached this Court, seeking a direction to the respondents not to proceed against the petitioners' personal assets before exhausting the assets of the principal debtor, viz. M/s. India Cassets Pvt. Ltd. There is also a prayer to quash Exts.P5, P5(a) and P6 and P6(a) revenue recovery proceedings.

2. I heard the learned counsel for the petitioners and also the learned Government Pleader.

3. According to petitioners, they are aggrieved by the action taken by the Kerala Financial Corporation against their personal movables and immovables for recovering the amounts due from the Company. It is stated that the first petitioner was once upon a time the Executive Director of M/s. India Cassets Private Limited Company and he resigned from the Directorship of the Company on 3.9.1997. Ext.P1 is the resignation letter.

The Board of Directors accepted his resignation as per Ext.P2 resolution dated 3.9.1997. ExtP3 is the Form 32 submitted by the Managing Director of the Company to the Registrar of Companies. Thus, the first petitioner ceased to be a Director of the Company with effect from 3.9.1997. The second petitioner is a Director of the Company. The business of the Company came to stand still from March, 1998 onwards. According to petitioners, the assets of the Company exceeded the liability. Support is sought to be derived from Ext.P4 Balance Sheet. There is reference to the steps taken by the Kerala Financial Corporation under Section 29 of the State Financial Corporation Act and also reference is made to the Judgment in O.P. No.6o39/97 to the effect that recovery steps will not be taken till the Appeal is disposed of. It is stated that the Company is under custody of the Cochin Export Processing Zone and the customs. Ext.P5 is a notice issued under the Revenue Recovery Act.

4. A Counter Affidavit is filed by the second respondent, inter alia, stating as follows:

The Kerala Financial Corporation sanctioned and disbursed a loan of Rs.45 Lakhs to the aforesaid Company in 1993 and towards repayment of the loan amount together with interest, the Managing Director of the Company executed a loan agreement on 9.12.1993, hypothecation agreement on 9.11.1993 and deposited title deed of the property having an extent of 33.45 Ares situated in Kakkanad with the Corporation. Both the writ petitioners and one Shri George Pandicheril executed personal guarantee deed on 9.12.1993 in favour of the Corporation. It is stated that the Kerala State Industrial Development Corporation holds pari pasu charge over the assets of the Company for the loan of Rs.90 Lakhs advanced to the Company. The Corporation denies knowledge of retiring of the petitioners and it is stated that they are liable to pay off the debts. It is also stated that the secured assets were taken over by the Customs and Cochin Special Economic Zone Authorities and the Corporation initiated revenue recovery proceedings against the guarantors and the proceedings are pending.

5. There is no Reply Affidavit filed to the Counter Affidavit. Therefore, it is clear that the petitioners are liable as guarantors under the agreements executed by them. It is also clear that the secured assets, namely the assets of the Company are being proceeded against. Therefore, there can be no basis at all to restrain the proceedings initiated by the second respondent against the petitioners. Accordingly, I find no merit in the Writ Petition and it is dismissed.

K. M. JOSEPH, JUDGE

K. M. JOSEPH, J.

O.P NO. 14529 OF 2000 D

JUDGMENT

14th December, 2007.